

STATE OF MICHIGAN
COURT OF APPEALS

In re WIRT, Minors.

UNPUBLISHED
November 8, 2016

No. 333113
Kent Circuit Court
Family Division
LC Nos. 15-050336-NA;
15-052758-NA

Before: SAWYER, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court orders terminating her parental rights to the minor children, MW and CW, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

MW was born in 2011.¹ In November 2014, he ingested an unknown substance while in mother's care. He was taken to the hospital, where he tested positive for benzodiazepine, Benadryl, and caffeine. Then, in February 2015, mother attempted to purchase illegal substances from an undercover police officer while MW was in the car. The police found crumbs of cocaine, a "crack pipe," and a "torn corner bag" in the vehicle with MW. A petition was authorized on February 5, 2015, and MW was removed from mother's care. When MW was removed, he exhibited extremely aggressive behaviors toward himself and others. MW was also behind on a number of developmental milestones, such as speech and motor skills. He also had extensive dental decay, for which he had extensive dental treatments.

Although mother was provided with a variety of services, she continued to struggle with substance abuse and did not make progress on any of her barriers to reunification. In August 2015, CW was born. CW was born two months premature, and, at birth, his urine tested positive for cocaine, opiates, and methadone, and his meconium tested positive for cocaine and opiates.² After CW's birth, mother continued to abuse drugs and failed to gain any benefit from her services. Throughout the duration of this case, mother was unemployed and unable to maintain

¹ Throughout this case, MW's and CW's fathers were unknown and unable to be located.

² Mother testified that some of the substances found in CW's system were prescribed.

consistent housing. She also missed a number of counseling appointments and failed to complete outpatient substance abuse treatment. As a part of a probation violation on a drug conviction from Kentucky, mother was ordered to complete a six-month inpatient substance abuse treatment program. Mother entered treatment in December 2015, but absconded from the inpatient facility on January 1, 2016. Mother was arrested and placed back in the inpatient treatment program. Then, in February 2016, she absconded from the inpatient facility again after completing six days of treatment. Mother was arrested on March 3, 2016, and was incarcerated in Kentucky up until the time of the termination hearing.

A termination hearing was held on April 19, 2016. It was requested that the court terminate the parental rights of mother and the unknown fathers. At the time, MW was four years old and CW was less than one. The principal concerns regarding mother were substance abuse, parenting, housing, domestic violence, and resource availability and management. The evidence established that mother failed to complete substance abuse treatment and was still abusing drugs at the time of the termination hearing. The evidence also established that mother lacked parenting skills and failed to comply with her case service plan. Following the termination hearing, the trial court found that grounds for termination of mother's parental rights to both children were established under MCL 712A.19b(3)(g) and that grounds for termination of mother's rights to MW were established under MCL 712A.19b(3)(c)(i). The court also found that termination was in the children's best interests.

On appeal, mother does not challenge the statutory grounds for termination, only asserting that the trial court erred when it found that termination of her parental rights was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When determining the best interests of the child, the focus should be on the child, not the parent, *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013), and the trial court must consider the record as a whole, *In re JK*, 468 Mich 202, 211; 661 NW2d 216 (2003). The trial court may consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). It may also consider the length of time the child was in foster care, the likelihood that the child could be returned to the parent's home in the foreseeable future, and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Other factors include evidence that the child is not safe with the parent and is thriving in foster care, *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011), "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption," *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 713.

The trial court found that termination of mother's parental rights was in the children's best interests because of mother's substance abuse issues, her failure to comply with the case service plan, and the children's need for permanence, stability, and finality. The evidence supports the trial court's finding that the termination of parental rights was in the children's best interests. First, the record supports that mother was unable to provide proper care to the children. Mother failed to meaningfully benefit from any substance abuse treatment services

throughout the duration of this case. The evidence supported that because of mother's continued substance abuse issues, the children would not be safe in her care. See *In re VanDalen*, 293 Mich App at 141. The evidence also showed that mother lacked the parenting ability necessary to care for her children. During visits, mother did not engage with MW at an age-appropriate level. Mother also failed to complete parenting classes, refused to participate in parenting coaching, and missed several parenting visits. The record supports that mother lacked the parenting ability necessary to care for her children. *In re Olive/Metts*, 297 Mich App at 41-42. The evidence also shows that mother was offered a variety of substance abuse and parenting services but did not consistently participate. Mother also failed to obtain and maintain housing and employment. Thus, the record supports that mother did not comply with her case service plan. *White*, 303 Mich App at 714. Accordingly, the trial court did not clearly err by finding that termination of mother's parental rights was in the children's best interests. *Id.* at 713.

On appeal, mother argues that the children should have been placed with her sister; however, the record reflects that the sister was not a viable option for relative placement. First, the record supports that inappropriate sexual activity occurred between MW and the sister's child while MW was in the sister's care. Moreover, there is no evidence to suggest that the sister was willing to permanently care for the children. At the hearing, the caseworker testified that although the sister had cared for the children in the past, she was unwilling to provide a permanent home for the children. According to the caseworker, there were no appropriate relatives willing to take the children. When making its best-interest determination, the trial court specifically considered relative placement and found that there were no appropriate relatives available. Accordingly, mother's argument regarding relative placement has no merit.

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Colleen A. O'Brien